

Exhibit 22

Volume: I

Pages: 1-258

Exhibits: 82-109

VIDEOTAPED EXAMINATION UNDER OATH OF

THOMAS E. MORRISON

Tuesday, February 2, 2016, 9:08 a.m.-6:04 p.m.

LOCKE LORD EDWARD, LLP

111 Huntington Avenue

Boston, Massachusetts

Court Reporter: Paulette Cook, RPR/RMR

2	4
1 APPEARANCES:	1 INDEX
2 Richard Salisbury, Esq.	2
3 Assistant Attorney General	3 Examination of: Page
4 Civil Medicaid Fraud Division	4 THOMAS E. MORRISON
5 P.O. Box 12548	5 By Mr. Salisbury 7
6 Austin, Texas 78711-2548	6 By Mr. Knight 248
7 512-936-1576	7 By Mr. Salisbury 255
8 richard.salisbury@texasattorneygeneral.gov	8
9 Counsel for the State of Texas	9
10	10
11 EWELL BROWN BLANKE & KNIGHT	11 EXHIBITS
12 By Joseph Knight, Esq.	12 No. Page
13 111 Congress Avenue, Suite 2800	13 Exhibit 82 Notice of Examination 12
14 Austin, Texas 78701	14 Under Oath
15 512-770-4010	15 Exhibit 83 Responses of CVS to 48
16 jknight@ebbkllaw.com	16 Demand for Written
17 and	17 Statement Under Oath
18 WILLIAMS & CONNOLLY, LLP	18 Exhibit 84 Document CVSHSP0014414 61
19 By Grant Geyerman, Esq.	19 Exhibit 85 Document CVSHSP0042392 65
20 Colleen McNamara, Esq.	20 Exhibit 86 Document CVSHSP0042398 69
21 725 Twelfth Street, N.W.	21 Exhibit 87 Document CHSP000279 76
22 Washington, D.C. 20005	22 Exhibit 88 Document CHSP000603-04 84
23 202-434-5186	23 Exhibit 89 Document CHSP000676-80 97
24 cmcnamara@wc.com	24 Exhibit 90 Document CHSP000838 102
25 Counsel for Thomas Morrison & CVS Health Corp.	25 Exhibit 91 Document CVSHSP0021074 110
3	5
1 APPEARANCES (cont.):	1 Exhibit 92 Document CHSP00781-82 112
2	2 Exhibit 93 Document CHSP001157-59 118
3 ALSO PRESENT: Mark Vernazza,	3 Exhibit 94 Document CVSHSP0174541-42 131
4 Senior Legal Counsel - CVS Health	4 Exhibit 95 Document CVSHSP0008309-23 139
5 Jody Urbati, Videographer	5 Exhibit 96 Document CVSHSP0008395 143
6	6 w/PowerPoint attachment
7	7 Exhibit 97 Document CVSHSP0008451-52 168
8	8 Exhibit 98 Document CVSHSP0017360-61 174
9	9 Exhibit 99 Document CHSP001016-18 180
10	10 Exhibit 100 Document CVSHSP0152188 181
11	11 Exhibit 101 Document CVSHSP0014709-11 186
12	12 Exhibit 102 Document CVSHSP0008919 188
13	13 Exhibit 103 Document CVSHSP0027811-12 189
14	14 Exhibit 104 Document CHSP000001-12 201
15	15 Exhibit 105 E-mail Exchanges 4/15/09 221
16	16 Exhibit 106 Document CHSP003184-85 231
17	17 w/attachment
18	18 Exhibit 107 Document CHSP003437-38 234
19	19 Exhibit 108 Document CHSP002990-3001 237
20	20 Exhibit 109 Document CVSHSP0042600 241
21	21 w/PowerPoint attachment
22	22 NOTE: Previously-marked Exhibits also used in this
23	23 examination were as follows: 13, 18, 22, 24, 25
24	24 and 42.
25	25

<p style="text-align: right;">66</p> <p>1 Q. What is Health Savings Plan?</p> <p>2 A. Health Savings Plan was a program that was</p> <p>3 established at CVS to provide some -- a program for</p> <p>4 -- for prescriptions in general, but also had health</p> <p>5 services associated with it.</p> <p>6 At this timeframe we were looking to</p> <p>7 create a new program really in relationship to</p> <p>8 Walgreen's. As you can see from the first e-mail</p> <p>9 that you gave me of 2006, it's now been a year and a</p> <p>10 half later, and so we didn't really feel that the</p> <p>11 Wal-Mart marketing of a \$4 program was that</p> <p>12 impactful to CVS since we didn't respond to it.</p> <p>13 However, because of what occurred was</p> <p>14 all the supermarkets were out competing against</p> <p>15 Wal-Mart, and so they came up with their -- with</p> <p>16 their programs to match Wal-Mart. However, it</p> <p>17 changed when Walgreen's decided to get into that</p> <p>18 arena. And what made them get into it? I have no</p> <p>19 idea.</p> <p>20 But Walgreen's is a similar store to CVS</p> <p>21 in that their convenience is as -- is similar where</p> <p>22 we have more stores in a geographic area. And so</p> <p>23 this -- once they came out with it, then we needed</p> <p>24 to look at it more closely. And so I had some</p> <p>25 analysis done to -- just to measure and understand</p>	<p style="text-align: right;">68</p> <p>1 Q. Well, what this analysis suggests is that if</p> <p>2 CVS were to match Wal-Mart's \$4 price, it would</p> <p>3 realize 1.1 million dollars less in profit.</p> <p>4 Correct?</p> <p>5 A. It would lower our revenues by 1.1 million</p> <p>6 dollars.</p> <p>7 Q. It would lower CVS's revenues by 1.1 million</p> <p>8 dollars annually, correct?</p> <p>9 (Pause.)</p> <p>10 A. It's hard to answer that one. They do state</p> <p>11 that they're looking at the scripts annually. So</p> <p>12 this could be an annual thing, but without having</p> <p>13 the actual data, it's hard for me to confirm that.</p> <p>14 Q. When you would look at actions or programs</p> <p>15 offered by a competitor, would you usually do that</p> <p>16 on an annual basis?</p> <p>17 A. Not necessarily.</p> <p>18 Q. So you don't know whether the numbers in</p> <p>19 Exhibit 85 are annual numbers?</p> <p>20 A. Well, they're talking about on the -- in the</p> <p>21 first sentence or the second sentence that CVS fills</p> <p>22 approximately 341,000 prescriptions annually based</p> <p>23 on the fourth quarter of 2007. So they're looking</p> <p>24 historically. They're looking at an annual number.</p> <p>25 And they're identifying what percentage of that is</p>
<p style="text-align: right;">67</p> <p>1 what is transpiring.</p> <p>2 Q. And Exhibit 85 is part of the analysis you</p> <p>3 had done, correct?</p> <p>4 A. Correct.</p> <p>5 Q. And Exhibit 85 includes a calculation of the</p> <p>6 cost to match Wal-Mart's \$4 price, correct?</p> <p>7 A. That would be what the analysis looked at,</p> <p>8 yes.</p> <p>9 Q. And the analysis concluded that the cost to</p> <p>10 match Wal-Mart's \$4 price was approximately 1.1</p> <p>11 million dollars, correct?</p> <p>12 A. That's what's listed here.</p> <p>13 Q. And, specifically, that was -- that 1.1</p> <p>14 million dollars was lost profit to CVS from matching</p> <p>15 Wal-Mart's \$4 price, correct?</p> <p>16 A. Could you repeat that again?</p> <p>17 Q. The 1.1 million dollars referenced in</p> <p>18 Exhibit 85 was lost profit to CVS for matching</p> <p>19 Wal-Mart's \$4 price, correct?</p> <p>20 A. It states here, yeah, the cost to match</p> <p>21 Wal-Mart's \$4 price would be that 1.1 million</p> <p>22 dollars.</p> <p>23 Q. And -- but the cost in this context means</p> <p>24 lost profit, correct?</p> <p>25 A. How do you define profit?</p>	<p style="text-align: right;">69</p> <p>1 generic.</p> <p>2 And then they're talking about, umm, in</p> <p>3 order to match the \$4 Wal-Mart program, that there's</p> <p>4 an impact of about 1.1 million dollars. And that</p> <p>5 would be on revenue. But it's hard for me to</p> <p>6 determine is that the annual number, what's it based</p> <p>7 on, is it really based on these numbers that they</p> <p>8 have here? I'd have to actually see the data in</p> <p>9 order to confirm that for you.</p> <p>10 Q. Well, you see at the bottom of the page in</p> <p>11 the original e-mail from Mr. Traficante to</p> <p>12 Mr. Ferschke it says, Paul, here is the HSP</p> <p>13 annualized pro forma, the competitor plan's</p> <p>14 comparison and drug breakdown by day supply.</p> <p>15 Do you see that?</p> <p>16 A. I do see that.</p> <p>17 Q. Does that suggest to you that the</p> <p>18 1.1-million-dollar cross number is an annual number?</p> <p>19 A. It could be, but I would want to see the</p> <p>20 data in order to confirm it.</p> <p>21 Q. Let me show you what I'm marking as</p> <p>22 Exhibit 86.</p> <p>23 (Exhibit 86 marked</p> <p>24 for identification.)</p> <p>25 BY MR. SALISBURY:</p>

<p style="text-align: right;">70</p> <p>1 Q. And Exhibit 86 is an e-mail from 2 Mr. Ferschke to you dated February 18, 2008, 3 correct? 4 A. February 18, 2008, correct. 5 Q. And that's the same date as the prior 6 exhibit, Exhibit 85, correct? 7 A. It is. 8 Q. And Exhibit 86 reads as follows: Tom, Paul 9 added the impact of matching Wal-Mart and Walgreen 10 pricing on all the cash business. It is over 100 11 million dollars. 12 Did I read that correctly? 13 A. You read what was in the e-mail, yes. 14 Q. And do you know why in this analysis, 15 Exhibit 86, there is a much higher impact calculated 16 for matching Wal-Mart and Walgreen pricing versus 17 Exhibit 85? 18 A. I don't, and that's why I said to you I 19 really need to see the underlying data in order to 20 confirm some of the questions that you're asking. 21 Q. Umm, do you recall that Mr. Ferschke did in 22 fact perform these types of analyses for you? 23 A. Paul Ferschke as well as Paul Traficante, 24 who you mentioned earlier, did perform a number of 25 analyses for me.</p>	<p style="text-align: right;">72</p> <p>1 Walgreen's program was and other -- other providers 2 of pharmacy prescription services out there. 3 And so when you do the analysis, you're 4 basing it on something. That's only to gather 5 information. 6 Q. And so what did you do in response to the 7 information that you gathered regarding the Wal-Mart 8 and Walgreen programs? 9 A. I don't remember specifically what I might 10 have done relative to that. Obviously, we were at 11 this time looking to create a program that would 12 meet the needs of our consumers given the publicity 13 that was taking place around the Wal-Mart, at the 14 supermarkets and now Walgreen's. So we needed to 15 respond to it at this point I felt. 16 Q. So you didn't feel that CVS needed to 17 respond initially to the Wal-Mart program, correct? 18 A. That's correct. 19 Q. But you did feel that CVS needed to respond 20 to the Walgreen's program, correct? 21 A. I believe that -- yes. I think we needed to 22 put together a program that would provide a tool for 23 our pharmacists because as they were getting 24 questions relative to some of the our competitors 25 and now a very close competitor who might have been</p>
<p style="text-align: right;">71</p> <p>1 Q. A number of analyses regarding the impact of 2 matching Wal-Mart and Walgreen pricing, correct? 3 A. No, a number of analyses relative to 4 managing our business. 5 Q. And that included analyses of the financial 6 impact of CVS matching Wal-Mart and Walgreen 7 pricing, correct? 8 A. They did some analysis relative to 9 understanding some of the -- some of the intricacies 10 of us trying to put together the Health Savings Pass 11 program. 12 Q. And one of the intricacies of putting 13 together the Health Savings Pass program was 14 determining what price to charge for the drugs 15 offered under the Health Savings Pass program, 16 correct? 17 A. With any program you have to look at all of 18 the various parameters, and price would be one of 19 them. 20 Q. And so price is one of the elements that you 21 had Mr. Ferschke and Mr. Traficante analyze, 22 correct? 23 A. No. When you do analysis, you need to have 24 some sort of a benchmark. And so the only thing 25 that was known was what Wal-Mart's program is, what</p>	<p style="text-align: right;">73</p> <p>1 across the street, it was incumbent upon us to make 2 sure that we gave them a program that -- that they 3 could utilize and provide to their customers. 4 Q. And so was HSP your idea? 5 A. HSP -- what was ultimately called HSP was an 6 idea that I needed to put something together, and I 7 put together a team to make -- to make that happen. 8 Q. And did someone tell you that you needed to 9 put something together, or did you just 10 independently determine now that now Walgreen is in 11 the game I need to put something together? 12 A. I don't recall exactly how that occurred, 13 but I would not -- I would -- I would think that at 14 this point when Walgreen's come out with it, I knew 15 -- I would tell myself I needed to put something 16 together. 17 So if there were other people who also 18 suggested it, so be it, but I would have already 19 done this analysis at this point, or I would have 20 started to put together the business plan to create 21 a new program for our pharmacists and our customers. 22 Q. And you say that you assembled a team, 23 correct? 24 A. Yes. 25 Q. And who was on the team?</p>

<p style="text-align: right;">86</p> <p>1 be different targets.</p> <p>2 Q. Do you recall what the value proposition for</p> <p>3 the new HSP was?</p> <p>4 A. Not right now, no.</p> <p>5 Q. In the third paragraph you wrote as follows:</p> <p>6 Rob was more interested in hearing what our message</p> <p>7 is and what our economic message will be; example,</p> <p>8 more than 200 generic drugs at dollar sign. He</p> <p>9 needs to understand what he can say technically and</p> <p>10 be sure to have a message that is broad enough to be</p> <p>11 meaningful. He heard from me for the first time</p> <p>12 that our goal is not to move all our cash business</p> <p>13 to this new card.</p> <p>14 Did I read that correctly?</p> <p>15 A. You did read it, yes.</p> <p>16 Q. Which Rob were you referring to?</p> <p>17 A. Umm, Rob Price.</p> <p>18 Q. Who is Rob Price?</p> <p>19 A. Harry -- I mean -- Harry? Umm --</p> <p>20 (Pause.)</p> <p>21 A. It's the over-60 syndrome. All of a sudden</p> <p>22 I've blanked -- Bari Harlam. Bari Harlam reported</p> <p>23 to Rob Price, I believe, at that time.</p> <p>24 Q. And so what was Mr. -- do you recall what</p> <p>25 Mr. Price's role was, what his title was?</p>	<p style="text-align: right;">88</p> <p>1 the store as opposed to I'll suggest Wal-Mart whose</p> <p>2 customers come from 20 to 25 miles away because they</p> <p>3 don't have stores on every corner on Main Street.</p> <p>4 So Wal-Mart needs an acquisition</p> <p>5 strategy. Our concern was that we're going to have</p> <p>6 a retention strategy because folks don't need to</p> <p>7 come -- they're not going to come 20 miles to a CVS.</p> <p>8 They're going to live in -- in that area.</p> <p>9 Q. So by retention strategy, you mean that CVS</p> <p>10 wanted to retain its existing cash customers,</p> <p>11 correct?</p> <p>12 A. We wanted to be able to provide a program</p> <p>13 that satisfied our existing customers and provided a</p> <p>14 tool for our pharmacists.</p> <p>15 Q. But you didn't -- CVS didn't want to acquire</p> <p>16 new cash customers through the new HSP program,</p> <p>17 correct?</p> <p>18 A. That wasn't our -- our goal.</p> <p>19 Q. But -- and --</p> <p>20 A. We have other strategies to acquire</p> <p>21 customers.</p> <p>22 Q. And what are your other -- what are CVS's</p> <p>23 other strategies to acquire customers?</p> <p>24 A. We market to customers on a weekly basis.</p> <p>25 We have radio advertising. We have TV advertising</p>
<p style="text-align: right;">87</p> <p>1 A. I don't really. It could have been a senior</p> <p>2 vice president of marketing, somewhere along those</p> <p>3 lines. He was -- he was overseeing the marketing</p> <p>4 area.</p> <p>5 Q. And why was it not your goal to move all of</p> <p>6 CVS's cash business to the new HSP?</p> <p>7 A. We had determined that it was probably more</p> <p>8 appropriate to have a retention strategy than an</p> <p>9 acquisition strategy.</p> <p>10 Umm, the cash customer -- while we had</p> <p>11 cash customers, they were not our primary customers</p> <p>12 over -- you know, they were smaller than 10 percent</p> <p>13 of our pharmacy prescriptions being filled.</p> <p>14 So it didn't make sense necessarily to</p> <p>15 go in that direction. But we did want to have a</p> <p>16 program to retain our customers. So we wanted</p> <p>17 something that was competitive, that provided the</p> <p>18 services that we felt our customers were looking</p> <p>19 for. And so that's what I'm referring to.</p> <p>20 Q. And when you say it didn't make sense to go</p> <p>21 in that direction, you meant it didn't make sense to</p> <p>22 get more cash customers?</p> <p>23 A. Our model was really based on convenience</p> <p>24 and service as I was stating earlier today. So most</p> <p>25 of our customers come within a three-mile radius of</p>	<p style="text-align: right;">89</p> <p>1 in some cases. We have newspaper advertising.</p> <p>2 Q. But --</p> <p>3 A. And that acquires customers for us.</p> <p>4 Q. But CVS did not advertise widely the new HSP</p> <p>5 program, correct?</p> <p>6 A. Correct.</p> <p>7 Q. And the reason that CVS did not widely</p> <p>8 advertise the new HSP program is that it was</p> <p>9 pursuing a retention strategy rather than an</p> <p>10 acquisition strategy, correct?</p> <p>11 A. Those are terms that you use when -- when</p> <p>12 you're trying to put together a -- a direction</p> <p>13 within a business program. And so, yes, we had a</p> <p>14 retention strategy.</p> <p>15 Q. Rather than an acquisition strategy,</p> <p>16 correct?</p> <p>17 A. We were not looking to have it be other than</p> <p>18 the retention strategy.</p> <p>19 Q. And retention strategy meant that CVS would</p> <p>20 retain its existing cash customers, right?</p> <p>21 A. Umm, I think I stated that the retention</p> <p>22 strategy is to provide a program that our current</p> <p>23 customers felt was beneficial to them, and it</p> <p>24 provided a tool for our pharmacists.</p> <p>25 Q. Right. But it's called a retention strategy</p>

<p style="text-align: right;">90</p> <p>1 because it retains customers, right?</p> <p>2 A. We hope that it would satisfy the needs of</p> <p>3 those customers and they would stay with CVS,</p> <p>4 correct.</p> <p>5 Q. And you were also concerned about avoiding</p> <p>6 what's called cannibalization, right?</p> <p>7 A. Umm, I don't think I stated it here, but</p> <p>8 with anything I do I have to think of</p> <p>9 cannibalization.</p> <p>10 Q. And what is cannibalization?</p> <p>11 A. It could mean many things. What -- how are</p> <p>12 you asking me to re -- refer to?</p> <p>13 Q. Well, more -- more to the point, CVS was</p> <p>14 concerned about not making the new HSP program too</p> <p>15 attractive to cash customers, correct?</p> <p>16 (Pause.)</p> <p>17 A. We were putting together a program that met</p> <p>18 the needs of our consumers that certainly felt to</p> <p>19 them that they would perceive it as a competitively</p> <p>20 good program that offered value to them.</p> <p>21 Umm...</p> <p>22 So I'm not sure how far I can go with</p> <p>23 that for you.</p> <p>24 Q. But CVS didn't want the program to be too</p> <p>25 good for CVS's customers, correct?</p>	<p style="text-align: right;">92</p> <p>1 A. Yes.</p> <p>2 Q. And then further down in the paragraph you</p> <p>3 wrote: Also, in last week's meeting with Larry Rob</p> <p>4 suggested that we were going to get the new card out</p> <p>5 by June. I think Rob was thinking about the impact</p> <p>6 on marketing initiatives.</p> <p>7 Did I read that correctly?</p> <p>8 A. You read it correctly.</p> <p>9 Q. So you also had a meeting with Larry Merlo</p> <p>10 apparently during the first week of February 2008,</p> <p>11 correct?</p> <p>12 A. The first week in?</p> <p>13 Q. February of 2008.</p> <p>14 A. Was that in a prior document you gave me?</p> <p>15 Q. Well, so your e-mail containing the sentence</p> <p>16 is dated February 11, 2008, right?</p> <p>17 A. Correct.</p> <p>18 Q. And it refers to last week's meeting with</p> <p>19 Larry, right?</p> <p>20 (Pause.)</p> <p>21 A. In the beginning of this e-mail, which was</p> <p>22 dated February 11th, I'm talking about the morning</p> <p>23 meetings went well. I use the prop slides,</p> <p>24 etcetera, etcetera. I don't know who was in that</p> <p>25 meeting.</p>
<p style="text-align: right;">91</p> <p>1 A. You know, I'm not sure what you're -- umm,</p> <p>2 we're trying to create a program that our customers</p> <p>3 appreciate.</p> <p>4 Q. Do you ever recall discussion of</p> <p>5 cannibalization risk as part of the process of</p> <p>6 designing the new HSP?</p> <p>7 A. I may have. I'm not sure that I recall it.</p> <p>8 Q. Let me show you what was previously marked</p> <p>9 as Exhibit 13. Wait, I'm sorry. I'm sorry. Let me</p> <p>10 go back. If you could put that one aside.</p> <p>11 Go back to Exhibit 88 for a second.</p> <p>12 A. Eighty-eight?</p> <p>13 Q. I wasn't -- I apologize. Yes, the prior</p> <p>14 one.</p> <p>15 On the second page of Exhibit 88, the</p> <p>16 first full paragraph on the second page of</p> <p>17 Exhibit 88 you wrote as follows: I have a followup</p> <p>18 meeting with Larry Merlo, Doug Sgarro, Rob, Bari</p> <p>19 Dave Purdy and a few others on Monday morning,</p> <p>20 February 25th.</p> <p>21 Did I read that correctly?</p> <p>22 A. The first sentence, yes.</p> <p>23 Q. Okay. And so you had apparently a meeting</p> <p>24 scheduled with Mr. Merlo on February 25th of 2008,</p> <p>25 correct?</p>	<p style="text-align: right;">93</p> <p>1 Q. Right, but later on in your e-mail you</p> <p>2 reference a meeting with Larry Merlo during the</p> <p>3 prior week, correct? Also in last week's meeting</p> <p>4 with Larry.</p> <p>5 A. Oh, okay. I see what you're saying. Yes, I</p> <p>6 could have had a meeting the prior week. Right.</p> <p>7 Q. Well, you reference a meeting with Larry,</p> <p>8 correct?</p> <p>9 A. Yes.</p> <p>10 Q. And that was Larry Merlo, right?</p> <p>11 A. Yes.</p> <p>12 Q. And then you also state that you're -- you</p> <p>13 will have a meeting -- another meeting with Larry</p> <p>14 Merlo on February 25th, right?</p> <p>15 A. Correct.</p> <p>16 Q. Then now if you will please look over at</p> <p>17 Exhibit 13 previously marked. And take a minute to</p> <p>18 review that, please.</p> <p>19 (Pause.)</p> <p>20 Q. Have you had a chance to review Exhibit 13?</p> <p>21 A. I did.</p> <p>22 Q. Exhibit 13 is an e-mail exchange from April</p> <p>23 of 2008, correct?</p> <p>24 A. Correct.</p> <p>25 Q. And the subject line on the e-mail exchange</p>

CERTIFICATE

COMMONWEALTH OF MASSACHUSETTS)

SUFFOLK, SS.)

I, Paulette M. Cook, Registered Merit Reporter
and Notary Public in and for the Commonwealth of
Massachusetts, do hereby certify that THOMAS E.
MORRISON, the witness whose deposition is
hereinbefore set forth, was duly sworn by me and
that such deposition is a true record of the
testimony given by the witness.

I further certify that I am neither related to
or employed by any of the parties in or counsel to
this action, nor am I financially interested in the
outcome of this action.

In witness whereof, I have hereunto set my hand
and seal this 16th day of February, 2016.



Notary Public

My commission expires:
February 5, 2021